

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

LUIS S. LAGAITE, JR.

§

VS.

§

CIVIL ACTION NO. 1:07cv87

JOSEPH SMITH, ET AL.

§

MEMORANDUM ORDER OVERRULING PLAINTIFF'S OBJECTIONS AND
ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff Luis S. Lagaite, Jr., an inmate at the Stiles Unit, proceeding *pro se*, brought the above-styled action pursuant to 42 U.S.C. § 1983 against Joseph Smith, Shane E. Gray, D. Cruse, and S. Roberts.

The court referred this matter to the Honorable Earl S. Hines, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge recommends this action be dismissed pursuant to 28 U.S.C. § 1915(g).

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such referral, along with the record, pleadings and all available evidence. Plaintiff filed objections to the magistrate judge's Report and Recommendation. This requires a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b).

After careful consideration, the court concludes plaintiff's objections are without merit. Plaintiff does not object to the determination that he has had at least three prior civil actions or appeals dismissed as frivolous or for failing to state a claim upon which relief may be granted.

Further, plaintiff has failed to show he was in imminent danger of serious physical injury at the time he filed this complaint. *See Banos v. O'Guin*, 144 F.3d 883, 884 (5th Cir. 1998).

O R D E R

Accordingly, plaintiff's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendations.

So **ORDERED** and **SIGNED** this **28** day of **September, 2007**.

A handwritten signature in black ink, appearing to read "Ron Clark", is written above a horizontal line.

Ron Clark, United States District Judge